

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

RESOURCE REAL ESTATE	:	
OPPORTUNITY OP, LP,	:	CASE NO. 3:11-CV-00220
	:	
Plaintiff,	:	JUDGE THOMAS M. ROSE
	:	
v.	:	
	:	
THE CANNERY AT WEBSTER STATION,	:	
LTD, <i>et al.</i> ,	:	
	:	
Defendants.	:	

AGREED ORDER OF CONFIRMATION OF SALE AND DISTRIBUTION

Resource Real Estate Opportunity OP LP (“Resource”) requests this Court to confirm the sale by Special Master William Fecher (the “Special Master”) of the property located at 434-508 E. 3rd Street, Dayton, Montgomery County, Ohio 45402, Parcel Nos. R72-6-2-24, 25, 29 to 35, 38; R72-8-2-74; R72-6-3-1 to 4; R72-6-3-5, 6; R72-6-3-7; and R72-6-3-8, 9, 10, 11 (the “Property”) which was conducted on June 6, at 10:00 a.m. in Room 801, 8th Floor of the Federal Building at 200 West Second Street, Dayton, Ohio. The legal description of the Property is attached to this Order as “Exhibit A,” and is incorporated herein by reference. The Property was sold by the Special Master to Resource for the successful bid amount of \$4,866,666.67.

Resource has given notice to the Court that it has assigned its successful credit bid to RRE Cannery Holdings LLC (“Cannery Holdings”), whose address is One Crescent Drive, Suite 203, Navy Yard Corporate Center, Philadelphia, PA 19112. Accordingly,

1. Having carefully examined the proceedings of the Special Master, the Court finds that the sale of the Property conformed in all respects to the law and the prior orders of this Court and that all non-defaulting parties to this foreclosure action agree to the terms of this Order, and hereby confirms and approves the Special Master’s sale of the Property and these proceedings.
2. The prior deed references with respect to the Property are as follows: General Warranty Deed recorded on August 10, 1998 in Deed Book 98-0537, Page A07 in the official records of Montgomery County; General Warranty Deed recorded on March 8, 2000 in Deed Book 00-139, Page B11 in the official records of Montgomery County; General Warranty Deed recorded on March 8, 2000 in Deed Book 00-139, Page B07 in the official records of Montgomery County; General Warranty Deed recorded on March 8, 2000 in Deed Book 00-139, Page B05 in the official records of Montgomery County; and General Warranty Deed recorded on March 8, 2000 in Deed Book 00-139, Page B09 in the official records of Montgomery County.
3. The Special Master’s sale of the Property is subject to the Memorandum of Lease (“CquenC Lease”) recorded in the official records of Montgomery County, Ohio as Instrument No. LEAS-07-059522, as outlined in the Agreed Final Judgment Entry and Decree in Foreclosure [Doc. No. 41] (the “Judgment Entry”), and does not foreclose, extinguish, impair or otherwise modify the CquenC Lease or any interest CquenC, LLC may have in the Property.

4. The Special Master shall convey the Property to Cannery Holdings by deed according to law, free and clear of all liens and encumbrances, but subject to the CquenC Lease referenced in paragraph 3 above, and shall issue the deed in the name of “RRE Cannery Holdings LLC.”
5. The bid of \$4,866,666.67 shall be applied as a credit toward the Judgment Amount, as defined and described in the Judgment Entry.
6. Resource is ordered to pay, within 7 business days after the entry of this Order, to the Treasurer of Montgomery County, Ohio, the following amounts: (i) \$49,265.80 for county real property taxes and assessments accrued through the second half of 2011, and (ii) \$14,601.50 in transfer taxes.
7. The Clerk is hereby ordered to issue checks to pay the costs of the Special Master from the amount placed on deposit by Resource, as follows:
 - (i) \$633.60 payable to the Dayton Daily News for the foreclosure sale ad; and
 - (ii) \$120.00 payable to the Montgomery County Recorder for recording fees.
8. The Clerk is further ordered to issue a check payable to Resource to represent the remaining balance of funds placed on deposit by Resource Real Estate Opportunity OP LP.
9. Upon entry, the Clerk shall issue a certified copy of this Order to the Montgomery County Recorder, directing the Recorder to enter the same on the margin of the records of the instruments listed on the attached “Exhibit B,” releasing the liens adjudicated herein from the Property, but only to the extent that such liens encumber the Property foreclosed upon in this action and not to the extent that they encumber any other property.

IT IS SO ORDERED.

Dated: June 15, 2012

s/Thomas M. Rose
JUDGE THOMAS M. ROSE

AGREED TO AND APPROVED:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 14th day of June, 2012, a copy of the foregoing *Agreed Order of Confirmation of Sale and Distribution* was filed via the Court's CM/ECF system, and was served electronically upon all parties registered with the Court to receive notice.

/s/Robert M. Stefancin

Robert M. Stefancin

EXHIBIT A

LEGAL DESCRIPTION

Parcel No. 1:

Situate in the City of Dayton, County of Montgomery, State of Ohio, being all of lot number 435, part of lot numbers 429 through 434, part of lot number 436 and part of lot number 438 and part of a vacated alley of the revised and consecutive numbers of lots on the revised plat of the said City of Dayton and the same lot and part lot numbers of the Letitia C. Cooper Plat as recorded in Plat Book "C2", Page 126 of the Montgomery County Records, also being the same property as conveyed to M. Frances Besch described as parcels 1, 2, 3 and 4 as recorded in Microfiche No. 93-754 E06-E11, said lot, part lots and part vacated alley being more particularly described as follows:

Beginning at a railroad spike set at the Northeast right of way intersection of Wyandot Street (39' R/W) and E. Fourth Street Extension (90' R/W) on the West line of lot number 429;

Thence with the East right of way of Wyandot Street and the West line of lots 429, 430 and 438, North 08 degrees 00 minutes 00 seconds East for a distance of 129.41 feet to a cross notch set at a Southwest corner of lands conveyed to M&M Investments as described on Microfiche No. 79-121 B05;

Thence with a South line of said M&M Lands and the common face of two walls, North 74 degrees 23 minutes 03 seconds East for a distance of 143.92 feet to an angle point in said walls;

Thence continuing with said common face and M&M lands, South 42 degrees 21 minutes 14 seconds East for a distance of 39.67 feet to an angle point in said walls on the North line of lot number 435;

Thence with the North line of lot number 435, and South line of said M&M lands, and said common face, North 49 degrees 13 minutes 20 seconds East for a distance of 202.43 feet to the Northeast corner of lot number 435 on the West right of way of Wayne Avenue (66' R/W);

Thence with the East line of lot number 434 and 435 and said Wayne Avenue right of way line, South 41 degrees 41 minutes 06 seconds East for a distance of 109.99 feet to a railroad spike set at the Southeast corner of lot number 434 and the Northwest right of way Intersection of said Wayne Avenue and Shawnee Street as platted in said Plat Book "C2", Page 126;

Thence with the North line of said Shawnee Street, South 44 degrees 30 minutes 00 seconds West for a distance of 135.64 feet to a railroad spike set at the North right of way Intersection of E. Fourth Street extension with said platted Shawnee Street;

Thence with the North right of way of E. Fourth Street Extension, South 73 degrees 53 minutes 21 seconds West for a distance of 327.57 feet to the place of beginning.

Containing 1.058 acres, more or less.

Parcel No. 2:

Situate in the City of Dayton, County of Montgomery, State of Ohio and being all of lot numbers 8900, 8901, 8902, 8903, 8904, 8905, 8906, and 8907 of the consecutive numbers of lots on the revised plat of the City of Dayton, Ohio including all of a 16 foot alley vacated by City of Dayton Ordinance Number 29559-98 which was originally part of said city lot number 8904 and being more particularly described as follows:

Beginning at a cross notch found at the Southeast right of way intersection of Third Street and Wayne Avenue as shown on the Worthington and Lowe's Subdivision as recorded in plat Book "A", Page 266;

Thence with the South right of way one of said Third Street North 75 degrees 10 minutes 10 seconds East for a distance of 392.70 feet to a cross notch found at the Southwest right of way Intersection of a 25 foot alley and said Third Street;

Thence with the West line of said 25 foot alley, South 14 degrees 56 minutes 22 seconds East for a distance of 137.00 feet to a Nag Nail found at the Northwest right or way intersection of two 25 foot alleys;

Thence with the North right of way of said 25 foot alley, South 75 degrees 10 minutes 10 seconds West for a distance of 323.59 feet to a Mag Nail found at the Northeast right of way Intersection of said Wayne Avenue and said 25 foot alley;

Thence with the Easterly right of way of said Wayne Avenue, North 41 degrees 41 minutes 06 seconds West for a distance of 153.56 feet to the place of beginning containing 1.126 acres more or less.

Being subject to all legal covenants, restrictions, easements, and highways of record.

This description is based on a field survey performed by Norfleet, Brown & Petkewicz, Inc. In June, 1998 and notes references. North is based on Plat Book C2, Page 126.

Together with an appurtenance easement for ingress and egress and parking as set forth and described in easement recorded in Microfiche No. 79-54 E10.

Permanent Parcel Numbers: R72-6-2-24, 25, 29 to 35, 38; R72-8-2-74; R72-6-3-1 to 4;
R72-6-3-5, 6; R72-6-3-7; R72-6-3-8, 9, 10, 11

Street Address: 434-508 E. 3rd Street, Dayton, Montgomery County, Ohio 45402

EXHIBIT B

INSTRUMENTS TO BE RELEASED

Open-End Mortgage recorded June 2, 1999 as Microfiche No. 99-2747D02

Mortgage recorded June 2, 1999 as Microfiche No. 99-2747E01

Open-End Mortgage recorded August 11, 2000 as Microfiche No. 00-3338D03

Mortgage recorded as Instrument No. 01-860A01 on February 22, 2001

Mortgage recorded as Instrument No. 04-144468 on December 29, 2004

Assignment of Mortgage filed for record August 10, 2010 as Instrument No. 10-047321

Assignment of Mortgage filed for record May 23, 2011 as Instrument No. 11-030650

Assignment of Rents and Leases recorded August 11, 2000, as Microfiche No. 00-3338C09

Financing Statement recorded August 11, 2000 as Microfiche No. 00-0212B09

Financing Statement recorded February 22, 2001 as Microfiche No. 01-45B03

Financing Statement recorded December 29, 2004 as Instrument No. 04-144470

Financing Statement recorded July 30, 2010 as Instrument No. 10-045091

Assignment of Financing Statement recorded August 10, 2010, as Instrument No. 10-047322

Assignment of Financing Statement recorded August 10, 2010, as Instrument No. 10-047323

Assignment of Financing Statement recorded May 23, 2011, as Instrument No. 11-030651

Subordination Agreement recorded October 26, 2000 as Microfiche No. 00-4541D06

Subordination Agreement recorded February 22, 2001 as Microfiche 01-918A09

Subordination Agreement recorded December 29, 2004 as Instrument No. 04-144472

Subordination Agreement recorded February 22, 2001 as Microfiche No. 01-918B01

Subordination Agreement recorded December 29, 2004 as Instrument No. 04-144471